

UPDATED INFORMATION

Long Term Care Medi-Cal Bulletin

December 2000

Wage Pass-Through Frequently Asked Questions and Answers

Effective August 1, 2000, Section 88 of Assembly Bill (AB) 2877, which amended Section 14110.6 of the Welfare and Institutions Code, requires the Department of Health Services (DHS) to increase rates to all long term care facilities, except acute transitional care facilities, to include a wage pass-through for employees who provide direct patient care. The August 1, 2000, wage pass-through provided by AB 2877 is in addition to the August 1, 1999, wage pass-through provided by AB 1107.

The intent of the wage pass-through is to improve the quality of care for nursing home residents by requiring affected facilities to increase the wages, salaries and benefits of their employees who provide direct patient care. Accordingly, the per diem rates, effective August 1, 2000, include a wage pass-through to increase wages for registered nurses, licensed vocational nurses, nurse assistants, plant operations and maintenance, housekeeping, laundry and linen, and dietary staff. The total amount to be passed-through by each facility is calculated by multiplying the per diem increase the facility receives by its number of Medi-Cal patient days. DHS will conduct audits of facilities to ensure that the wage pass-through has been passed on to employees providing direct patient care. Facilities that fail to comply with the wage pass-through requirements will be liable to make restitution to the Medi-Cal program for any funds not expended for this purpose, and to pay a penalty equal to 10 percent of the Medi-Cal funds not distributed.

In order to facilitate the implementation of AB 2877, DHS has compiled the following frequently asked questions and answers. The questions and answers below should be used by long term care facilities as guidelines for the proper distribution of the August 1, 2000, wage pass-through funds. The questions and answers will also be used as a guideline by auditors who conduct audits of the August 1, 2000, wage pass-through fund distributions.

Questions related to these questions and answers or the wage pass-through implementation should be directed to the DHS wage pass-through coordinator at (916) 657-0126. **Note:** Effective October 24, 2001, the original contact phone number for the wage pass-through coordinator published in December 2000 was updated.

August 1, 1999, Wage Pass-Through Frequently Asked Questions and Answers

Q: *Do the August 1, 2000, long term care rates include funds to continue the salary, wage and benefit increases implemented by long term care facilities for the August 1, 1999, wage pass-through?*

A: Yes. The August 1, 2000, long term care rates continue to fund the August 1, 1999, wage pass-through amount for long term care facilities.

Also, the August 1, 2000, long term care rates continue to fund an additional \$0.14 wage pass-through amount to only Freestanding Nursing Facilities - Level B and Distinct Part Nursing Facilities - Level B. The \$0.14 was included in a \$2.96 rate increase effective January 1, 2000, to reflect the requirements contained in AB 1107, effective August 1, 1999. The following is an example of the Freestanding Nursing Facilities – Level B wage pass-through amounts for 1999:

WAGE PASS-THROUGH: FREQUENTLY ASKED QUESTIONS AND ANSWERS *(continued)*

8/1/99 wage pass-through	\$ 2.03
1/1/00 wage pass-through	<u>\$ 0.14</u>
(only to Freestanding Nursing Facilities - Level B and Distinct Part Nursing Facilities - Level B)	

Total wage pass-through effective 1/1/00 through 7/31/00	\$ 2.17
(only to Freestanding Nursing Facilities – Level B and Distinct Part Nursing Facilities – Level B)	

Funding for the August 1, 2000, through July 31, 2001, rate year also contains funds to continue the August 1, 1999, through July 31, 2000, wage pass-through. Thus, facilities should continue to pass-through to their employees the August 1, 1999, through July 31, 2000, wage pass-through funds.

August 1, 2000 Wage Pass-Through

Q: *Which facilities receive the wage pass-through funds?*

A: Freestanding and distinct-part nursing facilities, subacute and pediatric subacute providers, nursing facility-based transitional care units, intermediate care facilities, intermediate-care facilities for the developmentally disabled, intermediate-care facilities for the developmentally disabled-habilitative, and intermediate-care facilities for the developmentally disabled-nursing receive the wage pass-through funds.

Q: *What is the authority for the wage pass-through increase, effective August 1, 2000, to the facilities listed above?*

A: AB 2877 provided wage pass-through funding for rate year 2000/2001.

Increase

Q: *What is a wage, salary or benefit increase for wage pass-through purposes?*

A: For wage pass-through purposes, it is an increase in wages, salaries or benefits that occurs on or after August 1, 2000, the implementation date of this wage pass-through.

Q: *Do wage, salary or benefit increases negotiated prior to August 1, 2000, count for this wage pass-through increase?*

A: No. The wage pass-through must be in addition to any wage, salary or benefit increases negotiated prior to August 1, 2000. This means that increases negotiated prior to August 1, 2000, may not be used to meet the new wage pass-through requirements.

Q: *Are wage, salary or benefit increases which were negotiated after August 1, 1999, but prior to August 1, 2000, that specifically included the wage pass-through obligation, permitted in lieu of this wage pass-through increase? Examples of negotiations are annual or multi-year labor agreements, or a contract between provider and “direct care staff” and/or “other staff” employees that qualify for wage pass-through.*

A: Yes. If wage, salary or benefit increases were negotiated in a labor agreement, or between the provider and its employee(s), and specifically included the wage pass-through obligation, those increases may satisfy the facility’s wage pass-through obligation.

Q: *What is the amount of the wage, salary or benefit increase that “direct care staff” and “other staff” must receive?*

A: The amount that a particular facility must pass on to its employees is calculated by multiplying its Medi-Cal patient days by its wage pass-through per diem amount. Facilities were notified of the wage pass-through per diem amounts in September 2000 Long Term Care *Medi-Cal Update* #282. Distinct-part nursing facilities and subacute facilities will be notified of their wage pass-through per diem amounts in an individual rate letter.

WAGE PASS-THROUGH: FREQUENTLY ASKED QUESTIONS AND ANSWERS *(continued)*

Q: *How was the wage pass-through per diem amount determined?*

A: The August 1, 2000, wage pass-through per diem amount represents an increase of 7.5 percent in the statewide average wages, salaries and benefits for “direct care staff” and “other staff” for the particular category of facility. For example, if the statewide average daily wages, salaries, and benefits for a particular class of facilities were \$70.00, then the per diem wage pass-through amount would be 7.5 percent of that amount, or \$5.25.

As a result, the actual overall percentage increase in wages, salaries or benefits that a particular facility will provide depends on the facility’s percentage of Medi-Cal patient days and its wage, salary and benefit level in relationship to the statewide average.

Q: *Is the wage pass-through funding only for one year?*

A: No. The cost of the wage pass-through will be funded by a new mandate in the rate-setting methodology until the actual cost for the wage pass-through increase is fully reflected in the facilities’ annual cost reports, and is fully reflected in the rate-setting process, and integrated into the respective rates. The intent of AB 2877 is for the August 1, 2000, wage pass-through increase to be a permanent increase.

Wage Pass-Through Distribution

Q: *Who receives the wage pass-through?*

A: The legislative mandate is to fund increases for “direct care staff” and “other staff,” as described below.

Q: *Which employees are classified as “direct care staff” in nursing facilities?*

A: “Direct care staff” in nursing facilities is defined as registered nurses (RNs), licensed vocational nurses (LVNs) and nurse assistants (NAs) employed in the performance of direct patient care. Employees performing respiratory therapy services for Medi-Cal pediatric subacute patients are also defined as “direct care staff.” However, with the exception of services for Medi-Cal pediatric subacute patients, respiratory care practitioners do not qualify for wage pass-through.

Q: *Which employees are classified as “direct care staff” in intermediate-care facilities for the developmentally disabled (ICF/DD), intermediate-care facilities for the developmentally disabled-habilitative (ICF/DD-H), and intermediate-care facilities for the developmentally disabled-nursing (ICF/DD-N)?*

A: “Direct care staff” in ICF/DDs, ICF/DD-Hs and ICF/DD-Ns is defined as all of the following:

- Qualified mental retardation professionals (QMRP) providing direct care to patients.
- Lead personnel employed in the performance of direct care to patients; such lead personnel shall not be considered to be supervisory.
- Employees in the nurse assistant classification providing direct care to patients at a freestanding or distinct-part nursing facility, including job titles such as nurse assistants and aides.
- Other nonsupervisory staff providing direct care to patients.
- Registered nurses and licensed vocational nurses providing direct care to patients.

Q: *Which employees are classified as “other staff?”*

A: “Other staff” is defined as linen and laundry staff, plant operations and maintenance staff, housekeeping staff and dietary staff. Such staff qualify to receive wage pass-through funds.

Q: *Are supervisors or supervisory staff allowed to receive wage pass-through funds?*

A: No. “Direct care staff” does not include registered nurses or other personnel performing supervisory functions. Likewise, “other staff” does not include supervisors. The statute provides that, in order to qualify for wage pass-through, employees must provide direct patient care or be categorized as linen and laundry staff, plant operations and maintenance staff, housekeeping staff and/or dietary staff. However, if a supervisor can document spending part of his/her time providing direct patient care, he/she may be entitled to a portion of wage pass-through.

WAGE PASS-THROUGH: FREQUENTLY ASKED QUESTIONS AND ANSWERS *(continued)*

The legislative intent is not to exclude staff by specific job title, but to allow inclusion based on the job duties performed. Individual staff within the included categories can be counted for wage pass-through compliance either fully, or partially, depending on their specific job duties. Staff whose primary function is supervision cannot be included, but staff whose supervisory duties are incidental to other job duties can be included. This same consideration is true for licensed staff that perform some supervisory duties and/or non-direct care duties, but also perform direct care duties part of the time. Again, the primary factor for determining inclusion is whether supervisory duties are incidental to the performance of direct care to patients.

Q: *Can the wage pass-through funds be distributed to respiratory care practitioners who provide direct patient care?*

A: Yes. Respiratory care practitioners who are employed by the facility and who perform respiratory therapy services for Medi-Cal pediatric subacute patients are defined as “direct care staff” for wage pass-through purposes. However, respiratory care practitioners who are not employees or who do not perform services for Medi-Cal pediatric subacute patients do not qualify for wage pass-through.

Q: *Can wage pass-through funds be distributed to other therapists such as speech therapists, physical therapists, and occupational therapists and their assistants who perform direct care?*

A: No. The statute does not authorize distribution of wage pass-through funds to these categories.

Q: *Can all of the wage pass-through funds be distributed to only one of the direct care or other classifications (RNs, LVNs, NAs, linen and laundry, dietary, maintenance and plant operation and housekeeping)?*

A: No. Each of the direct care and other classifications should receive a portion of the wage pass-through funds. Each classification does not have to receive equal portions of the wage pass-through. It is within the facility’s discretion to allocate the amounts that each classification will receive.

Q: *Can wage pass-through funds be used to pay for contracted labor?*

A: No. The intent of the wage pass-through is to increase the wages, salaries and benefits of facility employees. Wage pass-through funds spent on contracted labor, such as registry staff, will not count towards the wage pass-through obligation. For example, if a facility contracts out the linen and laundry functions of the facility, an increase in the linen and laundry contract would not constitute wage pass-through compliance.

Q: *If a facility contracts out for one or more of the “other staff” services (for example, dietary, housekeeping, linen and laundry, and plant maintenance and operations), does the facility have an obligation to increase what it pays the contracting agency or to require the contracting agency to increase its wages, salaries and benefits?*

A: No. The intent of the wage pass-through is to benefit facility employees. The wage pass-through funds are to be distributed to all required categories in which the facility employs one or more eligible persons.

Q: *How should the facility distribute the wage pass-through funds to “other staff” if these staff provide support for various areas of the facility? For example, some facilities offer services to multiple levels of care such as having an acute facility and a nursing facility on the same campus. When this occurs, “other staff” (for example, dietary, housekeeping, linen and laundry, and plant maintenance and operations) typically do not work just within the nursing facility. Rather, during a single shift, their services benefit the nursing facility along with other portions of the campus (for example, preparing meals or washing sheets for nursing facility residents and acute patients, and cleaning floors or fixing equipment throughout the larger facility or campus). In such facilities, how much of the wage, salary and benefit increases given to “other staff” count towards the facility’s wage pass-through obligation?*

A: Wage, salary and benefit increases given to nonsupervisory “other staff” throughout the larger facility or campus will count towards a facility’s wage pass-through obligation. The facility determines how much of the wage pass-through increase to allocate to “other staff.” Facilities should fully document all wage pass-through funds that increase the wages, salaries and benefits of nonsupervisory “other staff.”

WAGE PASS-THROUGH: FREQUENTLY ASKED QUESTIONS AND ANSWERS (*continued*)

Wages and Salaries

Q: *What items are included in wage pass-through as wages and salaries?*

A: Wage and salaries include, but are not limited to, hourly, salaried, and retroactive wages paid to employees for services performed in the facility areas and by the employment classifications included in this wage pass-through.

Q: *Are bonuses allowable for wage pass-through purposes?*

A: No. Bonuses do not constitute wage pass-through compliance.

Q: *Are retroactive wage increases allowable for wage pass-through purposes?*

A: Retroactive wage increases are allowable for wage pass-through purposes if the associated wage increase also increases the employee's base wage or salary rate.

Employee Benefits

Q: *What items are included in wage pass-through as employee benefits?*

A: Any benefit cost increase that occurs as the result of a direct tie to salary and wages may also be funded (for example, any benefit that is charged as a percentage of salary and wages). Wage-related benefits include, but are not limited to, the employer's portion of Social Security, Medicare, State Unemployment Insurance (SUI), Federal Unemployment Insurance (FUI), profit sharing, and accrued liability for paid leave and retirement. A general cost or premium increase that is not a new benefit or is not required by virtue of an increase in wages will not be allowed.

Q: *Are totally new benefits, such as dental or vision care, allowable employee benefits for wage pass-through purposes?*

A: Yes. New benefits that the facility had not previously offered to "direct care staff" or "other staff" are allowable. Examples of this would be offering a vision or dental plan for "direct care staff" or "other staff" that had not previously been offered.

Q: *Are upgraded employee benefits such as health care or retirement benefits allowable for wage pass-through purposes?*

A: Yes. An upgraded benefit for "direct care staff" or "other staff" would be allowed. Examples of this would be more comprehensive health care, a more extensive retirement plan or higher employer contribution to an existing health or retirement plan. If a benefit is being upgraded for wage pass-through, only the incremental increase will be counted in the wage pass-through calculation. If the coverage rate increases, but the benefits covered do not, the rate increase will not be counted as part of the wage pass-through.

Q: *Are workers' compensation costs allowable for wage pass-through purposes?*

A: Yes, however, only workers' compensation costs that result directly from salary increases paid with wage pass-through funds are allowable for wage pass-through purposes. Wage pass-through funds cannot be used to fund increases in workers' compensation premium rates.

Q: *Do increased benefit costs result from an increased number of cases in workers' compensation costs or changes in group health insurers allowable for wage pass-through purposes?*

A: No. When determining wage pass-through compliance, allowable costs will include costs attributed to new benefits and the base period cost benefits for "direct care staff" and "other staff." An increase in benefits must be an additional or upgraded benefit.

Base Period

Q: *What is the base period to which the wage pass-through increase will be compared?*

A: Since wage pass-through compliance verifications will be done on a yearly basis, the base period is the year immediately prior to the implementation date of August 1, 2000. The base period is therefore August 1, 1999, through July 31, 2000.

WAGE PASS-THROUGH: FREQUENTLY ASKED QUESTIONS AND ANSWERS (*continued*)

Q: *Will there be a look-back period (for example, can a salary increase granted prior to August 1, 2000, be considered) for wage pass-through compliance?*

A: No. Except as noted in the “Increase” section above, the legislation requires affected facilities to increase wages, salaries and benefits as of August 1, 2000.

Provider Certification

Q: *Will there be a certification process?*

A: Yes. Each facility will be required to complete a wage pass-through certification form. DHS will distribute the forms in a provider bulletin.

Q: *Where will the certification forms be submitted?*

A: The certification forms will be submitted to DHS. Facilities are also required to submit a copy of the certification form to all collective bargaining agents with whom the facility has collective bargaining agreements for “direct care staff” and “other staff.”

Q: *What happens if a facility refuses to submit the wage pass-through certification form?*

A: DHS may suspend the provider from the Medi-Cal program.

Q: *What happens to a facility that submits false information on the wage pass-through certification form?*

A: The facility is in violation of the law and DHS will take appropriate action.

Provider Participation

Q: *Can a provider “opt-out” of the wage pass-through program?*

A: No. The wage pass-through is for the benefit of the employees, not the facilities.

Q: *What if a facility does not pass through its wage pass-through funds?*

A: The facility shall be liable for the amount of the wage pass-through funds paid to the facility but not distributed to employees for wages, salaries and benefits, plus a penalty equal to 10 percent of the funds not distributed.

Q: *Are facilities which operate under county organized health systems (managed care plans) required to participate in the wage pass-through program?*

A: Yes. Section 14110.6, subdivision (f)(10), provides:

“County organized health systems contracting with the department pursuant to Article 2.8 (commencing with Section 14087.5) and Article 7 (commencing with Section 14490) of Chapter 8 shall certify to the department, in a manner to be specified by the department, that the August 1, 2000, wage pass-through funds, received pursuant to this section in the form of capitated rate payments, were passed through to the facilities described in this subdivision.”

Managed care plans are required to pass the wage pass-through funds through to the facilities. Therefore, these facilities are required to distribute the wage pass-through funds to the specified employees.

Audits of Wage Pass-Through Compliance

Q: *Will audits be performed to verify that the wage pass-through funds were distributed properly?*

A: Yes.

WAGE PASS-THROUGH: FREQUENTLY ASKED QUESTIONS AND ANSWERS (*continued*)

Q: *If an employee complains to DHS that a facility has not complied with the wage pass-through requirements, will DHS investigate the complaint?*

A: In adopting the wage pass-through, the Legislature decided that compliance would be implemented and monitored by use of fiscal year 2001/2002 audits.

Q: *When will the audits be performed?*

A: Beginning July 1, 2001, auditors will begin examining for wage pass-through compliance. Audit results will be released by July 2002.

Q: *Are governmental facilities, such as state-operated, district-operated and county-operated facilities, required to comply with the wage pass-through requirements?*

A: Yes.

Q: *What will occur if an audit determines that a facility did not comply with the wage pass-through requirements?*

A: DHS will recover the amount of unpaid or incorrectly paid wage pass-through funds plus a penalty of 10 percent of the funds not distributed or incorrectly distributed.

Q: *Can a facility be audited for the August 1, 1999, wage pass-through during the audit of the August 1, 2000, wage pass-through?*

A: Yes. Auditors will review the wage pass-through funds distributed for both the August 1, 1999, and August 1, 2000, wage pass-through implementation periods.

Q: *Will the audits be based, in part, on these questions and answers?*

A: Yes. Auditors will use the information contained in these questions and answers, in part, as an audit guideline.